

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Griffin	Team: APU	CCRB Case #: 201801230	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 11/23/2017 5:47 PM	Location of Incident: [REDACTED]	Precinct: 40	18 Mo. SOL 5/23/2019	EO SOL 5/23/2019	
Date/Time CV Reported Wed, 02/14/2018 10:04 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/14/2018 10:04 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Scott Pariona	23554	963198	040 PCT
2. POF Julia Goldberg	01532	956684	040 PCT
3. POM Omar Habib	00748	942899	040 PCT
4. POM Kelvin Marte	20322	959402	040 PCT
5. An officer			040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Erick Erdaide	3047	947910	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Omar Habib	Abuse of Authority: Police Officer Omar Habib stopped § 87(2)(b) .	A . § 87(2)(g) [REDACTED]
B . POM Omar Habib	Force: Police Officer Omar Habib used a chokehold against § 87(2)(b) .	B . § 87(2)(g) [REDACTED]
C . POM Omar Habib	Force: Police Officer Omar Habib used physical force against § 87(2)(b) .	C . § 87(2)(g) [REDACTED]
D . POF Julia Goldberg	Force: Police Officer Julia Goldberg used a taser against § 87(2)(b) .	D . § 87(2)(g) [REDACTED]
E . An officer	Force: An officer used physical force against § 87(2)(b) .	E . § 87(2)(g) [REDACTED]
F . An officer § 87(4-b), § 87(2)(g)	Force: An officer restricted § 87(2)(b) breathing. [REDACTED]	F . § 87(2)(g) [REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
I . POM Scott Pariona	Other: There is evidence suggesting Police Officer Scott Pariona provided a false official statement in violation of Patrol Guide Procedure 203-08.	I . § 87(2)(g) [REDACTED]

Case Summary

On February 7, 2018, Investigator Sara Griffin called § 87(2)(b) regarding CCRB case #201800779. During the telephone conversation, § 87(2)(b) alleged that on November 23, 2017, police officers from the 40th Precinct used a Taser against him. On February 14, 2018, this complaint was generated regarding the incident.

On November 23, 2017, at approximately 5:47 PM, Police Officer Omar Habib of the 40th Precinct stopped § 87(2)(b) inside the § 87(2)(b) floor elevator of § 87(2)(b) in the Bronx (**Allegation A: Abuse of Authority, § 87(2)(g)**). PO Habib placed § 87(2)(b) in a chokehold (**Allegation B: Force, § 87(2)(g)**) and punched § 87(2)(b) (**Allegation C: Force, § 87(2)(g)**). Police Officer Julia Goldberg of the 40th Precinct used a Taser against § 87(2)(b) (**Allegation D: Force, § 87(2)(g)**). Once § 87(2)(b) was handcuffed and was lying on his stomach outside the elevator, an unidentified officer allegedly placed a foot on § 87(2)(b)'s back (**Allegation E: Force, § 87(2)(g)**). Due to the officer's foot and the Taser prongs, § 87(2)(b) had difficulty breathing (**Allegation F: Force, § 87(2)(g)**). § 87(2)(b) was removed to the hospital. He was not arrested or summonsed.

§ 87(4-b), § 87(2)(g)

There is evidence suggesting PO Scott Pariona provided a false official statement in violation of Patrol Guide Procedure 203-08 (**Allegation I: Other Misconduct**).

There is video footage of the incident.

On April 5, 2018, the CCRB notified the NYPD of the existence of the video footage.

§ 87(2)(e), § 87(2)(g)

Findings and Recommendations

Allegation A - Abuse of Authority: Police Officer Omar Habib stopped § 87(2)(b)

Officers from the 40th Precinct responded to a report of an assault in progress at the § 87(2)(b) floor of § 87(2)(b). The location is a transition home and requires all non-residents, police officers included, to be escorted throughout the building by security. It is undisputed that PO Habib, PO Pariona, and PO Marte went to the § 87(2)(b) floor without security, where they encountered § 87(2)(b). It is undisputed that § 87(2)(b) was never believed to be involved in the reported assault.

It is undisputed that § 87(2)(b) approached the officers and inquired why they were on the § 87(2)(b) floor without security. It is undisputed that § 87(2)(b) and PO Habib argued before the officers, § 87(2)(b) and another resident, § 87(2)(b) entered onto the § 87(2)(b) floor elevator. Once in the elevator, it is undisputed that § 87(2)(b) and PO Habib continued to argue until the elevator reached the § 87(2)(b) floor.

The investigation obtained video footage of the incident from the elevator of § 87(2)(b). Attached below is a SnagIt clip (Board Review 8). The footage does not capture audio.



2018-02-14_15-00-13.mp4

At 00:04 seconds, PO Habib, PO Marte and PO Pariona exit the elevator, leaving § 87(2)(b) and § 87(2)(b) inside. At 00:08 seconds, PO Habib turns around and reenters the elevator. He pushes past PO Pariona and begins to physically engage § 87(2)(b).

§ 87(2)(b) (Board Review 1) acknowledged cursing at the officers and criticizing them for being unattended on the wrong floor, but he denied ever making a threat. § 87(2)(b) (Board Review 5) denied hearing § 87(2)(b) make any threat towards the officers.

PO Habib's testimony (Board Review 2) is as follows. PO Habib stopped § 87(2)(b) because he believed § 87(2)(b) was an emotionally disturbed person. § 87(2)(b) appeared intoxicated, cursed, and threatened to "fuck up" the officers and kick their asses. PO Habib feared for the safety of himself and his partners. PO Habib believed § 87(2)(b) would harm someone given that he appeared to be under the influence of something, although PO Habib did not know what. There was nothing for which § 87(2)(b) could have been arrested.

PO Habib was presented the video during his CCRB interview. It refreshed PO Habib's recollection that he exited the elevator before reentering to stop § 87(2)(b). PO Habib stated that § 87(2)(b) made a comment, which PO Habib did not recall, that made PO Habib think he was an emotionally disturbed person and therefore needed to be stopped.

PO Pariona testified (Board Review 3) that § 87(2)(b) threatened to "fuck up" the officers, while PO Marte (Board Review 4) did not remember if § 87(2)(b) made any threat towards the officers.

The Threat, Resistance, and Injury (T.R.I) Reports completed by PO Habib (Board Review 6) and PO Pariona (Board Review 7) both indicate that the officers suspected § 87(2)(b) of alcohol intoxication, drug usage, and to be an emotionally disturbed person.

According to Patrol Guide Procedure 221-13, an emotionally disturbed person is a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others (Board Review 9). A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime. Patrol Guide Procedure 212-11 (Board Review 10); People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 11).

§ 87(2)(g) PO Habib testified that he determined § 87(2)(b) was an emotionally disturbed person solely

because § 87(2)(b) was intoxicated, cursed, and threatened the officers. § 87(2)(g)
§ 87(2)(g)
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§ 87(2)(g) Per PO Habib's own testimony, there was nothing for which § 87(2)(b) could have been arrested. § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

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§ 87(2)(g)

Allegation B - Force: Police Officer Omar Habib used a chokehold against § 87(2)(b)
Allegation C - Force: Police Officer Omar Habib used physical force against § 87(2)(b)
§ 87(2)(b)

After PO Habib stopped § 87(2)(b) video footage appears to show PO Habib placing § 87(2)(b) in a chokehold and throwing a punch towards § 87(2)(b)'s face.

§ 87(2)(b) (Board Review 1) did not allege that PO Habib placed him in a chokehold during his sworn statement but called the undersigned investigator on April 9, 2018, and added that after seeing video footage of the incident, he realized that he had been placed in a chokehold. § 87(2)(b) testified that PO Habib reentered the elevator and immediately punched him in the mouth. § 87(2)(b) testified to resisting solely by holding onto the elevator rail and pushing PO Habib with his arm.

PO Habib (Board Review 2) denied placing § 87(2)(b) in a chokehold or making any contact with § 87(2)(b)'s neck. PO Habib denied punching § 87(2)(b) and stated there would have been no reason to punch § 87(2)(b) although he testified § 87(2)(b) resisted by flailing his arms and legs.

After reviewing the video footage, PO Habib denied that he placed his arm around § 87(2)(b)'s neck and stated he was holding onto § 87(2)(b)'s arm and upper torso. PO Habib acknowledged seeing the punch in the video footage. PO Habib stated he threw the punch to overcome § 87(2)(b)'s resistance and that he used the minimum force necessary.

PO Pariona (Board Review 3) testified that § 87(2)(b) resisted by tensing his arms and stretching his body. PO Marte and PO Goldberg testified (Board Review 4 and 12) that § 87(2)(b) was resisting by flailing his arms, while PO Marte also alleged that § 87(2)(b) pushed

away from the officers. PO Pariona did not remember seeing the alleged force, while PO Marte and PO Goldberg denied seeing PO Habib place § 87(2)(b) in a chokehold or punch § 87(2)(b). The video footage did not refresh PO Pariona's, PO Marte's, and PO Goldberg's recollection about PO Habib using the alleged force.

§ 87(2)(b) (Board Review 5) did not know if an officer made contact with § 87(2)(b)'s neck, but she recalled seeing an officer punch § 87(2)(b).

In a telephone statement, § 87(2)(b) (Board Review 17), who was outside of the § 87(2)(b) floor elevator during the incident, said he did not see any officer place § 87(2)(b) in a chokehold or place their arm around § 87(2)(b)'s neck.

PO Habib's T.R.I. (Board Review 6) does not indicate that a hand strike was used. During his interview (Board Review 2), PO Habib stated he did not check off hand strike when he completed the T.R.I., because he must have not remembered utilizing a hand strike.

In the video embedded under Allegation A, at 0:17, PO Habib appears to wrap his left arm around § 87(2)(b)'s neck. At 0:20, PO Habib appears to throw a punch towards § 87(2)(b)'s face. PO Habib's arm appears to be wrapped around § 87(2)(b)'s neck until 0:26.

As stated in Patrol Guide Procedure 221-01 (Board Review 13), an officer's use of force must be reasonable under the circumstances. The reasonableness of the use of force by a police officer is determined by the following factors:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Also established in Patrol Guide Procedure 221-01, a chokehold shall include, but is not limited to, any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Members of service shall not use a chokehold.

§ 87(2)(g)
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Allegation D - Force: Police Officer Julia Goldberg used a Taser against § 87(2)(b)

It is undisputed that PO Goldberg entered the elevator and used a Taser against § 87(2)(b)

§ 87(2)(b) testified (Board Review 1) that while using his arm to push PO Habib, PO Goldberg entered the elevator and discharged a Taser against him. The prongs attached to his chest and broke his skin.

PO Goldberg's testimony (Board Review 12) is as follows. Upon initially viewing the officers struggling inside the elevator, PO Goldberg believed § 87(2)(b) was kneeling and was flailing his limbs to resist. PO Goldberg estimated that she waited approximately 20 to 30 seconds before deploying the Taser and was approximately eight feet from § 87(2)(b). One of the prongs made contact with § 87(2)(b)'s stomach, but the other prong missed. The Taser appeared to have no effect on § 87(2)(b). PO Goldberg stated she chose to use the Taser because physical force was not working and she did not want § 87(2)(b) or the officers to sustain any further injuries. After the first Taser cycle ended, PO Goldberg immediately held down the Taser for a second cycle. PO Goldberg believed she discharged three cycles of the Taser in total.

PO Goldberg's T.R.I. (Board Review 14) indicated that a conducted electrical weapon was utilized to overcome resistance or aggression and for the defense of other MOS.

The X-26 Data Sheet (Board Review 15) indicates that PO Goldberg discharged four cycles of the Taser, each cycle lasting five seconds, adding up to a total of 20 seconds.

In the video footage embedded under Allegation A, at 0:17, PO Goldberg enters onto the elevator. At 0:20, PO Goldberg discharges the Taser at § 87(2)(b). At 0:28, PO Goldberg is pushed out of the elevator, as other officers enter. Upon reviewing the video footage, PO Goldberg admitted to discharging at least one cycle of the Taser while she was outside of the elevator.

According to Patrol Guide Procedure 221-08 (Board Review 16), a Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others. Members should consider that exposure to the Taser for longer than 15 seconds may increase the risk of death or serious injury. All applications must be independently justifiable, and the risks should be weighed against other force options.

Despite testifying that she waited approximately 20 to 30 seconds, the video footage shows that only three seconds passed between when PO Goldberg entered the elevator and when she discharged the Taser. During this time, § 87(2)(b) only resisted by flailing his limbs, pushing back, wrapping his arms around a pole, and stretching out his body. Three officers were physically engaging with § 87(2)(b) when PO Goldberg deployed the Taser.

§ 87(2)(g)

Allegation E - Force: An officer used physical force against § 87(2)(b)

Allegation F - Force: An officer restricted § 87(2)(b)'s breathing.

It is undisputed that after PO Goldberg used a Taser against § 87(2)(b) officers proceeded to attempt to place § 87(2)(b) in handcuffs.

§ 87(2)(b) alleged (Board Review 1) that outside the elevator, as the officers attempted to handcuff him, an officer placed their foot on top of his back. The officer applied pressure by using his whole bodyweight which caused § 87(2)(b)'s breathing to become restricted. § 87(2)(b) believed the officer was either PO Pariona or PO Marte, but he was not sure. § 87(2)(b) told the officer he could not breathe, and the officer removed his foot from § 87(2)(b)'s back.

PO Pariona (Board Review 3) and PO Marte (Board Review 4) both denied placing their foot on § 87(2)(b)'s back. PO Pariona and PO Marte did not remember seeing another officer do so or hear § 87(2)(b) complain of difficulty breathing.

PO Habib (Board Review 1) denied seeing an officer place their foot on § 87(2)(b)'s back or hearing § 87(2)(b) complaint of difficulty breathing.

In § 87(2)(b)'s telephone statement (Board Review 17), he did not remember seeing an officer place their foot on § 87(2)(b)'s back.

The elevator video footage does not capture these allegations, given that they allegedly occurred outside the elevator in the hallway.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation I - Other Misconduct: There is evidence suggesting Police Officer Scott Pariona provided a false official statement in violation of Patrol Guide Procedure 203-08.

There is evidence to suggest that PO Pariona provided a false official statement. On May 10, 2018, an IAB spin-off (#201803507) was generated. On April 4, 2018, PO Pariona was interviewed at the CCRB. During his interview, PO Pariona made multiple statements that were contradicted by material evidence, including but not limited to:

PO Pariona testified that upon arriving to § 87(2)(b) regarding a reported assault, building security had no knowledge of the alleged assault. The investigation determined this to be false given that the building security officer, § 87(2)(b) PO Habib, and PO Goldberg each testified that building security knew about the alleged assault. Furthermore, the building security officer, § 87(2)(b) had called 911 to report the alleged assault.

PO Pariona testified that he went to the § 87(2)(b) floor of the building (despite the alleged assault occurring on the § 87(2)(b) floor) because Central Communications repeatedly stated via radio that the incident occurred on either the § 87(2)(b) or § 87(2)(b) floor. The investigation determined this to be false, given that a recording of the Police Radio Communications reveals that Central Communications never mentioned the § 87(2)(b) floor. Per the recording, Central Communications only mentions the lobby of the building and the § 87(2)(b) floor. The Event documentation also shows that the § 87(2)(b) floor was never mentioned. PO Pariona was shown the relevant Event documentation during his interview at the CCRB, but PO Pariona testified that it did not change his recollection of Central Communications mistakenly sending officers to the § 87(2)(b) floor.

PO Pariona testified that § 87(2)(b) got within two centimeters of PO Habib's face while on the § 87(2)(b) floor. The investigation determined this to be false, as no one else testified that this occurred. PO Habib testified that § 87(2)(b) remained a foot away from him. PO Marte denied seeing § 87(2)(b) get close to any officer's face while on the § 87(2)(b) floor. § 87(2)(b) and § 87(2)(b) denied that § 87(2)(b) got close to any officer's face while on the § 87(2)(b) floor.

PO Pariona testified that § 87(2)(b) again got within two centimeters of PO Habib's face inside an elevator. The investigation determined this to be false given that video footage irrefutably shows that this did not occur.

During his CCRB interview, PO Pariona was presented the video footage which irrefutably shows that § 87(2)(b) did not come within two centimeters of PO Habib's face. After viewing the video footage, PO Pariona testified that at 5:47:09 in the video footage, § 87(2)(b) got within centimeters of PO Habib's face. At that exact moment in the video footage, § 87(2)(b) is seen pushing an elevator button and is not within centimeters of PO Habib's face.

PO Pariona testified that PO Habib restrained § 87(2)(b) moments after § 87(2)(b) got within centimeters of PO Habib's face. The investigation determined this to be false given that video footage shows that this did not occur. Video footage shows that PO Habib exits the elevator before reentering to restrain § 87(2)(b). PO Pariona was shown the video footage, and he testified that the video did not refresh his recollection of the incident.

PO Pariona testified that when he first encountered § 87(2)(b) he knew that § 87(2)(b) was known to police. However, PO Pariona then testified that he had never previously seen or spoken to § 87(2)(b). § 87(2)(b) had never been to § 87(2)(b) before, and that he did not know § 87(2)(b)'s name when he first encountered him nor did he learn it during the encounter.

Patrol Guide Procedure 203-08 prohibits officers from intentionally making false official statements and that officers will be subject to disciplinary action up to and including dismissal for doing so (Board Review 18).

§ 87(2)(g)
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Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s second CCRB complaint. § 87(2)(b)'s first CCRB complaint was self-reported use of force by 40th Precinct officers (Board Review 19).
- PO Habib has been a member of the NYPD for 11 years and is the subject of two prior complaints involving five allegations. In case #200914904, a physical force allegation was substantiated against PO Habib. PO Habib allegedly took a handcuffed prisoner into a bathroom and punched him. The Board recommended Command Discipline. The NYPD's penalty included PO Habib being docked 35 vacation days and a five-day suspension. In case #201602469, a retaliatory summons and stop allegation were substantiated against PO Habib. The Board recommended Command Discipline B. The NYPD implemented the penalty of Command Discipline A (Board Review 20).
- PO Goldberg has been a member of the NYPD for three years and is the subject of one prior complaint involving three allegations. None of the allegations were substantiated.

Page 9

CCRB Case # 201801230

§ 87(2)(g) (Board Review 21).

- PO Pariona has been a member of the NYPD for one year and this is his first CCRB complaint (Board Review 22).
- PO Marte has been a member of the NYPD for two years and is the subject of one prior complaint involving one allegation. The allegation was not substantiated § 87(2)(g) (Board Review 23)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation, as § 87(2)(b) filed a notice of claim.
- § 87(2)(b)
- On December 20, 2017, § 87(2)(b) filed a notice of claim with the Comptroller's Office for \$2 million plus attorney fees (Board Review 25).

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date